Human Rights

ENFORCED OR INVOLUNTARY DISAPPEARANCES

Fact Sheet No. 6 (Rev.1)

World Campaign for Human Rights

Introduction

> Some men arrive. They force their way into a family's home, rich or poor, house, hovel or hut, in a city or in a village, anywhere. They come at any time of the day or night, usually in plain clothes, sometimes in uniform, always carrying weapons. Giving no reasons, producing no arrest warrant, frequently without saying who they are or on whose authority they are acting, they drag off one or more members of the family towards a car, using violence in the process if necessary.*

Such may often be the first act in the drama leading to the enforced or involuntary disappearance of a person, a particularly heinous violation of human rights. It is a doubly paralysing form of suffering: for the victims, who are kept ignorant of their fate, frequently tortured and constantly fearing for their lives, and for family members, whose emotions alternate between hope and despair, who wait and wonder sometimes for years, and who may never receive any news. The victims know that their families are unaware of their whereabouts and that the chances are slim that anyone will come to their assistance. Having been removed from the protective precinct of the law and disappeared from society, they are in fact deprived of all rights and are at the mercy of their captors. If death is not the final outcome and they are eventually released from the nightmare, the victims may suffer a long time from the physical and psychological consequences of this form of dehumanization and of the brutality and torture by which it is often accompanied.

The family and friends of disappeared persons also suffer slow mental torture — not knowing whether the victim is still alive, and, if so, where held, under what conditions, and in what state of health. Aware, furthermore, that they too are threatened, that they may expect

* Report entitled "Disappeared Technique of Terror", prepared by the Independent Commission on International Humanitarian Issues, London, 1986.

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the same fate themselves, and that to search for the truth may itself be dangerous.

The family's distress is frequently compounded by the material circumstances accompanying the disappearance. The missing person is often the family's main financial contributor. He or she may also be the only member of the family able to cultivate the crops or run the family business. While the family's emotions are gravely affected, they suffer equally in economic terms, not least because of costs incurred during the subsequent search. Furthermore, they do not know when, if ever, their loved one is going to return, which makes it difficult for them to adapt to the new situation. Economic and social marginalization are frequently the consequences.

An example of enforced or involuntary disappearances may be seen in the following: a person is arrested, detained, abducted or otherwise deprived of his/her liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on their behalf, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of his/her liberty, thereby placing such person outside the protection of the law.

Action by the General Assembly

Given the grave nature of disappearances, the United Nations General Assembly devoted particular attention to this odious phenomenon. In 1979, by resolution 33/173, it requested the United Nations Commission on Human Rights to consider the question of disappeared persons with a view to making appropriate recommendations. By this time the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities had already dealt extensively with the subject of disappearances and suggested specific measures for adoption by the Commission.

Establishment of a working group

The subsequent establishment, in 1980, of the Working Group on Enforced or Involuntary Disappearances by the United Nations Commission on Human Rights was thus inspired by the United Nations General Assembly. It was the first mechanism set up within the framework of the United Nations Human Rights Programme to deal with specific violations of human rights of a particularly serious nature in an issue-oriented manner. Previous to that, working groups and special rapporteurs had been appointed only to deal with the human rights situation in a given country or territory.

Subsequent years have seen the establishment of other thematic procedures in related fields, such as the appointment of special rapporteurs on extrajudicial, summary or arbitrary executions and on the question of torture and the Working Group on Arbitrary Detention.

From its inception, the Working Group on Enforced or Involuntary Disappearances has dealt with some 35,000 individual cases pertaining to more than 58 countries. For reasons well beyond the scope of the Working Group, only a fraction of those cases has been clarified. Nevertheless, the extent to which the Working Group, through its patient and persistent contacts with the Governments concerned, may have prevented more cases from occurring cannot be quantified. The fact that it was able, especially within the framework of its urgent action procedure, to contribute to the clarification of cases, and thus possibly to save human lives, has been considered sufficient reason for its continued activity. Moreover, the mechanism by the Working Group should be seen as a reflection of international concern and action. It should equally be seen as forming part of a long-term process leading to the elimination of major violations, a process which aims at the creation of genuine public awareness of human rights and at providing advisory services and technical assistance to Governments for their promotion and protection.

In December 1992, the General Assembly adopted a Declaration on the Protection of All Persons from Enforced Disappearances as a body of principles for all States. The full text of the Declaration is reproduced as an annex to this Fact Sheet.

I. *Rights violated by the practice of disappearances*

The practice of enforced disappearances of persons infringes upon an entire range of human rights embodied in the Universal Declaration of Human Rights and set out in the International Covenant on Civil and Political Rights as well as other major international human rights instruments. Disappearances can also involve serious violations of the rules contained in the Standard Minimum Rules for the Treatment of Prisoners, approved by the United Nations Economic and Social Council in 1957, as well as in the Code of Conduct for Law Enforcement Officials and the Body of Principals for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in 1979 and 1988 respectively. The following individual rights may be infringed upon in the course of a disappearance:

The right to life: disappeared persons may be arbitrarily executed or may die in detention as a result of cruel treatment or from lack of care;

The right to liberty and security of the person and of his/her related rights, such as the right not to be subjected to arbitrary arrest, the right to a fair trial and the right to recognition as a person before the law;

The right to humane conditions of detention and the right not to be subjected to torture or to cruel or degrading treatment or punishment.

Disappearances generally violate the right to a family life as well as those rights of an economic, cultural and social nature, such as the right to an adequate standard of living and the right to the education of the family. In the Working Group's experience the disappearance of the family's main economic supporter, particularly in less affluent societies, frequently leaves the family in a desperate socio-economic situation in which the majority of the rights enumerated in the International Covenant on Economic, Social and Cultural Rights cannot be realized.

The serious economic hardships which usually accompany a disappearance are most often borne by women. When women are the victims of disappearances they become particularly vulnerable to sexual and other forms of violence in direct violation of their human rights. In addition, it is women who are most often at the forefront of fighting disappearances of members of their family. In this capacity they may suffer intimidation, persecution and reprisals.

Children are also involved in disappearances, both directly and indirectly. The disappearance of a child is in clear contravention of a number of provisions of the Convention on the Rights of the Child, including the right to a personal identity. Depriving a child of her or his parent through a disappearance is also a serious violation of that child's human rights.

II. *Mandate of the Working Group on Enforced or Involuntary Disappearances*

As mentioned above, the United Nations General Assembly adopted resolution 33/173 entitled "Disappeared persons", in which it expressed concern over reports from various parts of the world relating to enforced or involuntary disappearances of persons and requested the United Nations Commission on Human Rights to consider the question with a view to making appropriate recommendations. At that time it also called upon Governments to devote appropriate resources to undertake rapid and impartial investigations into cases of enforced or involuntary disappearances and to ensure that law enforcement and security authorities were fully accountable, especially in law, in the discharge of their duties. Such accountability would include legal responsibility for unjustifiable excesses which might lead to enforced or involuntary disappearances and to other violations of human rights.

By resolution 20 (XXXVI) of 29 February 1980, the Commission decided to "establish for a period of one year a working group consisting of five of its members, to serve as experts in their individual ca-

pacities, to examine questions relevant to enforced or involuntary disappearances of persons''. Since then, the mandate and terms of reference of the Working Group have been renewed by the Commission and approved by the United Nations Economic and Social Council each year. Since 1986 this has been done biennially.

In its resolutions the United Nations Commission on Human Rights endorsed the Working Group's methods of work and the humanitarian spirit underlying its mandate. It urged the Governments concerned to take steps to protect the families of disappeared persons against any intimidation or ill-treatment to which they might be subjected and encouraged them to give serious consideration to inviting the Working Group to visit their countries. It also stressed the importance of publicizing the objectives, procedures and methods of the Working Group within the framework of the information activities of the United Nations Centre for Human Rights.

The Commission also requested the Working Group to take action in connection with acts of intimidation or reprisals against relatives of missing persons and private individuals or groups who seek to cooperate or have cooperated with United Nations human rights bodies, or who have provided testimony or information to them; who avail or have availed themselves of procedures established under United Nations auspices for the protection of human rights and fundamental freedoms or have provided legal assistance to them for this purpose.

Activities of the Working Group

In implementing its broad mandate, the Working Group has developed totally novel, unorthodox mechanisms for dealing with complaints about human rights violations. It has, from early days, operated on three different levels. First of all, the Group's major task has been to deal with individual cases; trying to assist the relatives of disappeared persons to ascertain the fate and whereabouts of their missing family members. For this purpose the Group receives and examines reports on disappearances submitted by relatives of missing persons or human rights organizations acting on their behalf. After determining whether those reports comply with a number of criteria, the Working Group

transmits individual cases to the Governments concerned, requesting them to carry out investigations and to inform the Working Group of their results. The Working Group deals with the numerous individual cases of human rights violations on a purely humanitarian basis, irrespective of the ratification by Governments of existing legal instruments providing for an individual complaints procedure. In this role it acts essentially as a channel of communication between the families of the missing persons and Governments and so far has successfully developed a dialogue, aimed at solving cases, with the majority of Governments concerned.

With a view to preventing the occurrence of irreparable damage, the Working Group has also established an urgent action procedure under which the Working Group's Chairman is authorized to process cases of recent disappearances in between the Group's sessions, thus helping to avoid any delays in its endeavours to save human lives.

Dealing with individual cases constitutes the bulk of the Working Group's activity. On a second level the Group has studied situations of disappearances in individual countries, including preventive and remedial legal or institutional mechanisms at the national level, and has recorded its observations in its general reports as well as in special reports following visits to certain countries which have extended invitations to the Working Group.

Thirdly, it has devoted attention to the phenomenon of disappearances in its entirety; its dynamics and dimensions. The Working Group has thus studied, *inter alia*, the extent to which a variety of civil and political, as well as social, economic and cultural rights are being violated by the practice of enforced disappearance of persons. It has also examined and identified, either in particular country contexts or at a general level, some of the most important elements leading to the practice of disappearances.

The Working Group meets three times a year for five to eight working days. It has traditionally held one meeting outside of Geneva, Switzerland, in order to hear the cases of relatives and witnesses who, otherwise, would not have been able to appear before it. Missions have also been undertaken to the following countries: Mexico and Cyprus (1982), Bolivia (1984), Peru (1985 and 1986), Guatemala (1987), Colombia (1988), Philippines (1990) and Sri Lanka (1991 and 1992).

III. *Methods of work*

The Working Group's methods of work are based on its mandate as stipulated in United Nations Commission on Human Rights resolution 20 (XXXVI) and are specifically geared to its main objective. That objective is to assist families in determining the fate and whereabouts of their missing relatives who, having disappeared, are situated outside the protective precinct of the law. To this end, the Working Group endeavours to establish a channel of communication between the families and the Governments concerned, in order to ensure that sufficiently documented and clearly identified individual cases which the families, directly or indirectly, have brought to the Working Group's attention are investigated and the whereabouts of the missing person clarified.

The Working Group's role ends when the fate and whereabouts of the missing person have been clearly established as a result of investigations by the Government or the family, irrespective of whether that person is alive or dead. At this point the Working Group no longer concerns itself with the question of determining responsibility for specific cases of disappearances or for other human rights violations which may have occurred in the course of disappearances. With respect to its work on this individual level, the nature of its activity is strictly humanitarian.

The Working Group's action is based on the principle of the State's responsibility for human rights violations committed within its territory and its obligation to prevent such violations or to investigate them where they have occurred. As with all other situations of State responsibility, such responsibility continues to exist, irrespective of changes of governments. This continuation in the chain of responsibility is especially important in relation to the phenomena of disappearances as the suffering of the victims, their relatives and friends will only end when the fate of the person, and his or her whereabouts are clearly established.

The Working Group does not deal with situations of international armed conflict, in view of the competence of the International Committee of the Red Cross (ICRC) in such situations, as determined by the Geneva Conventions of 12 August 1949 and their Additional Proto-

cols of 1977. Further information on these conventions may be found in Fact Sheet No. 13: *International Humanitarian Law and Human Rights*.

In considering cases of disappearances, the Working Group deals exclusively with Governments because, as explained above, Governments must, as a matter of principle, assume responsibility for violations of human rights on their territory. The Working Group will not consider cases of abductions which are not directly or indirectly attributable to a Government. It will therefore not process individual cases of disappearances perpetrated by irregular or insurgent groups fighting a Government on its own territory. Nevertheless, when studying the situation of disappearances in a particular country or examining the phenomenon of disappearances in a general way, the Working Group considers that information on all disappearances is relevant to a proper evaluation.

Admissibility

Reports on disappearances are considered admissible by the Working Group when they originate from the family or friends of the missing person. Such reports may also be channelled to the Working Group through representatives of the family, Governments, intergovernmental organizations, humanitarian organizations and other reliable sources. They must be submitted in writing with a clear indication of the identity of the sender.

In order to enable Governments named in the reports to carry out meaningful investigations, the Working Group provides them with information containing at least a minimum of basic data. In addition, the Working Group constantly urges the sources of reports to furnish as many details as possible on the identity of the missing person (if available, identity card numbers) and the circumstances of the disappearance. The Working Group requires the following minimum elements:

(*a*) Full name of the missing person;

(*b*) Date of disappearance, i.e. day, month and year of arrest or abduction or day, month and year when the missing person was last

seen. When the missing person was last seen in a detention centre, an approximate indication is sufficient;

(*c*) Place of arrest or abduction or where the missing person was last seen (at least an indication of the town or village);

(*d*) Parties presumed to have carried out the arrest or abduction or to hold the missing person in unacknowledged detention; and,

(*e*) Steps taken to determine the fate or whereabouts of the missing person or at least an indication that efforts to resort to domestic remedies were frustrated or have otherwise been inconclusive.

Reported cases

Reported cases of disappearances are placed before the Working Group for detailed examination during its sessions. Those which fulfil the requirements as outlined above are transmitted, upon the Working Group's specific authorization, to the Governments concerned, with a request to carry out investigations and to inform the Working Group of their results. The reported cases are communicated by letter from the Working Group's Chairman to the Government concerned through that Government's Permanent Representative to the United Nations.

Reports indicating that officials from more than one country were directly responsible for or involved in a disappearance are communicated to both the Government of the country where the disappearance occurred and the Government of the country whose officials or agents were alleged to have participated in the arrest or the abduction of the missing person. However, in any general evaluation of disappearances in a given country which may be made, such cases are attributed to the country in which the person was reportedly held in detention or last seen.

In cases of the disappearance of a pregnant woman, the child presumed to have been born during the mother's captivity is mentioned in the description of the mother's case. The child is treated as a separate case when witnesses have reported that the mother actually gave birth to a child during her detention.

The Working Group reminds every Government concerned, at least once a year, of the cases which have not yet been clarified and twice a year of all urgent action cases transmitted during the preceding six months for which no clarification has been received. Furthermore, at any time during the year any Government may request the summaries of cases that the Group has transmitted to it.

Urgent action procedure

Cases that occurred within the three months preceding receipt of the report of the disappearance by the Working Group are cabled directly to the concerned Ministers of Foreign Affairs. Their transmission can be authorized by the Chairman on the basis of a specific delegation of power given to him or her by the Working Group. Cases which occurred prior to the three-month limit but not more than one year before the date of their receipt by the secretariat, provided that they had some connection with a case which occurred within the three-month period, can be transmitted between sessions by letter upon authorization by the Chairman.

Replies from Governments and clarification of cases

All replies received from Governments on reports of disappearances are examined by the Working Group and forwarded to the sources of those reports who are invited to make observations and/or provide additional details on the cases.

If the reply clearly indicates where the missing person is (whether alive or dead) and if that information is sufficiently definite for the family to be reasonably expected to accept it, the Working Group considers the case clarified at the session following the receipt of that information.

While the Working Group's mandate does not extend beyond the stage at which a disappeared person's fate is made known, other human

rights procedures of the United Nations can take up where the Working Group leaves off. If the reply from the Government concerned clearly indicates that the missing person has been found dead, tortured, in arbitrary but acknowledged detention, or to be a victim of other human rights violations for which government officials or groups or individuals linked to them are allegedly responsible, the case is brought to the attention of the appropriate mechanism or body.

If the reply provides definite information on the missing person's fate after the reported date of disappearance, but does not unambiguously specify the person's present whereabouts (indicating, for instance, that the person was released from prison some time ago or that he or she is free, without stating where), a reply from the source of the initial report to the Group has to be awaited. If the source does not respond within six months of the date on which the Government's reply was communicated to it, the case is considered clarified. If the source contests the Government's information on reasonable grounds, the Government is so informed and invited to comment.

If the source provides well-documented information that a case has erroneously been considered clarified because the Government's reply referred to a different person, does not correspond to the reported situation or has not reached the source within the six-month period described above, the Working Group resubmits the case to the Government, requesting it to comment. In such instances the case is again listed among the unclarified cases and a specific explanation of the situation is given in the Working Group's report to the United Nations Commission on Human Rights, indicating the errors or discrepancies.

Any substantive additional information which the source submits on an outstanding case is placed before the Working Group and, following its approval, transmitted to the Government concerned. If the additional information received amounts to a clarification of the case, the Government is so informed.

The Working Group retains cases in its files as long as the exact whereabouts of the missing persons have not been determined. It maintains that the State's responsibility for disappearances continues to exist irrespective of changes of Government, even though the new Government shows greater respect for human rights than the Government in office at the time when the violations had occurred. However, the Working Group accepts the closure of a case in its files when the com-

petent authority specified in the relevant national law pronounces, with the concurrence of the relatives and other interested parties, on the presumption of death of a person reported missing.

Reports of a more general nature

Once a year, the Working Group transmits to the Governments concerned a summary of general allegations received from relatives of missing persons and non-governmental organizations with regard to the phenomenon of disappearances in their respective country, inviting them to comment on the summary if they so wish.

With regard to countries in which visits have been carried out, the Working Group periodically reminds the Governments concerned of the observations and recommendations formulated in the respective reports, requesting information on the consideration given to them as well as the steps taken for their implementation or the constraints which might have prevented their implementation.

Protection of relatives and witnesses

The Working Group is also concerned with the protection of relatives of missing persons, their legal counsel, witnesses to disappearances or their family, members of organizations of relatives and other non-governmental organizations or individuals concerned with disappearances.

In cases of persecution, intimidation or reprisal against these persons, the Working Group contacts the Government concerned with the appeal that they take steps to protect all the fundamental rights of the persons affected and to investigate the case thoroughly in order to put an end to the intimidation or reprisals.

Protection of relatives, witnesses and other persons involved in a disappearance will often require prompt intervention. Cases of alleged intimidation, persecution or reprisals are directly transmitted to the relevant Ministers of Foreign Affairs by means of a cable, telex or fax. To

facilitate this process, the Working Group has authorized its Chairman to transmit such cases between sessions.

IV. *How to report cases of disappearances*

Information on the enforced or involuntary disappearance of a person may be submitted in any written form — in urgent cases preferably by cable, telex or telefax to:

The Working Group on Enforced or
Involuntary Disappearances of
the Commission on Human Rights,
Centre for Human Rights
United Nations
1211 Geneva 10, Switzerland

Cable Address: UNATIONS Geneva
Telex No. 41 29 62
Fax No. (41 22) 9170123

The report must clearly identify the person or organization making it and must include a contact address. When a case is submitted by a non-governmental organization, the Working Group requires it to act directly or indirectly upon the request of the family or friends. It is necessary for the submitting organization to remain in contact with the family or friends in order to be able to forward to them any information it receives on the results of the Working Group's endeavours.

As is explained more fully in Section III, a report should contain the following minimum information:

Full name;

Day, month and year of disappearance;

Place of disappearance;

Those considered responsible;

Information about any search which has been made.

Experience has shown that information on the enforced or involuntary disappearance of a person varies greatly in detail by reason of the nature of each case and the surrounding circumstances. Forms designed to assist relatives in formulating reports on disappearances can be obtained from the United Nations Centre for Human Rights. While it is important to receive as much information as possible, missing details should not prevent the submission of reports. However, the Working Group can only process clearly identified individual cases containing the minimum elements of information outlined in Section III.

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ANNEX

GENERAL ASSEMBLY RESOLUTION 47/33
ADOPTED 18 DECEMBER 1992

Declaration on the Protection of All Persons from Enforced Disappearance

The General Assembly,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations and other international instruments, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Deeply concerned that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law,

Considering that enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human

rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity,

Recalling its resolution 33/173 of 22 December 1978, in which it expressed concern about the reports from various parts of the world relating to enforced or involuntary disappearances, as well as about the anguish and sorrow caused by those disappearances, and called upon Governments to hold law enforcement and security forces legally responsible for excesses which might lead to enforced or involuntary disappearances of persons,

Recalling also the protection afforded to victims of armed conflicts by the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto, of 1977,

Having regard in particular to the relevant articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which protect the right to life, the right to liberty and security of the person, the right not to be subjected to torture and the right to recognition as a person before the law,

Having regard also to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that States parties shall take effective measures to prevent and punish acts of torture,

Bearing in mind the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Standard Minimum Rules for the Treatment of Prisoners,

Affirming that, in order to prevent enforced disappearances, it is necessary to ensure strict compliance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment contained in the annex to its resolution 43/173 of 9 December 1988, and with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, set forth in the annex to Economic and Social Council resolution 1989/65 of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989,

Bearing in mind that, while the acts which comprise enforced disappearance constitute a violation of the prohibitions found in the aforementioned international instruments, it is none the less important to devise an instrument which characterizes all acts of enforced disappearance of persons as very serious offences and sets forth standards designed to punish and prevent their commission,

1. *Proclaims* the present Declaration on the Protection of All Persons from Enforced Disappearance, as a body of principles for all States;

2. *Urges* that all efforts be made so that the Declaration becomes generally known and respected:

Article 1

1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

Article 2

1. No State shall practise, permit or tolerate enforced disappearances.

2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforce disappearance.

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Article 4

1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.

2. Mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance.

Article 5

In addition to such criminal penalties as are applicable, enforced disappearances render their perpetrators and the State or State authorities which organize, acquiesce in or tolerate such disappearances liable under civil law, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law.

Article 6

1. No order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it.

2. Each State shall ensure that orders or instructions directing, authorizing or encouraging any enforced disappearance are prohibited.

3. Training of law enforcement officials shall emphasize the provisions in paragraphs 1 and 2 of the present article.

Article 7

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

Article 8

1. No State shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 9

1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above.

2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.

3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.

Article 10

1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.

2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.

Article 11

All persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.

Article 12

1. Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.

2. Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and

imprisonment, and of other officials authorized by law to use force and firearms.

Article 13

1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.

3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.

5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

Article 14

Any person alleged to have perpetrated an act of enforced disappearance in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial unless he has been extradited to another State wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control.

Article 15

The fact that there are grounds to believe that a person has participated in acts of an extremely serious nature such as those referred to in article 4, paragraph 1, above, regardless of the motives, shall be taken into account when the competent authorities of the State decide whether or not to grant asylum.

Article 16

1. Persons alleged to have committed any of the acts referred to in article 4, paragraph 1, above, shall be suspended from any official duties during the investigation referred to in article 13 above.

2. They shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts.

3. No privileges, immunities or special exemptions shall be admitted in such trials, without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations.

4. The persons presumed responsible for such acts shall be guaranteed fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements in force at all stages of the investigation and eventual prosecution and trial.

Article 17

1. Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.

2. When the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established.

3. Statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.

Article 18

1. Persons who have or are alleged to have committed offences referred to in article 4, paragraph 1, above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.

2. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account.

Article 19

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation.

Article 20

1. States shall prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance, and shall devote their

efforts to the search for and identification of such children and to the restitution of the children to their families of origin.

2. Considering the need to protect the best interests of children referred to in the preceding paragraph, there shall be an opportunity, in States which recognize a system of adoption, for a review of the adoption of such children and, in particular, for annulment of any adoption which originated in enforced disappearance. Such adoption should, however, continue to be in force if consent is given, at the time of the review, by the child's closest relatives.

3. The abduction of children of parents subjected to enforced disappearance or of children born during their mother's enforced disappearance, and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such.

4. For these purposes, States shall, where appropriate, conclude bilateral and multilateral agreements.

Article 21

The provisions of the present Declaration are without prejudice to the provisions enunciated in the Universal Declaration of Human Rights or in any other international instrument, and shall not be construed as restricting or derogating from any of those provisions.

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